

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal of  
Healthworks Home Medical  
Inc./Healthworks PCA, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

A contested case hearing in the above-entitled matter was held on April 12, 2013 before Administrative Law Judge Jeffrey W. Jacobs at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing of the Commissioner of Human Services dated August 16, 2010, to determine whether the Minnesota Department of Human Services (DHS or Department) properly sought recovery of \$135,214.27 in overpayments of Minnesota Health Care Programs (MHCP) funds from Healthworks Home Medical, Inc. and Healthworks PCA, Inc. (collectively Healthworks). Parties were permitted to file post hearing submissions. The record closed on May 3, 2013.

Corrie Oberg, Assistant Attorney General, appeared on behalf of DHS. Chad Jellum, Chief Executive Officer of Healthworks, appeared on behalf of Healthworks. Mr. Jellum was advised of the right to retain counsel but elected to proceed without an attorney.

**STATEMENT OF ISSUE**

Whether DHS is entitled to recover MHCP payments totaling \$135,214.27 made to Healthworks for claims for personal care assistant (PCA) services and qualified professional supervision of PCA services from July 1, 2006 through January 31, 2007.

Based on the evidence in the hearing record, the ALJ makes the following:

**FINDINGS OF FACT**

1. DHS's Surveillance and Integrity Review Section (SIRS) is charged with investigating providers to monitor compliance with federal and state rules, regulations, and statutes governing the health care services provided to patients pursuant to the Minnesota Health Care Programs (MHCP). Minn. R. 9505.2160, subp. 1 and 9505.2200, subp. 1 (2011).

2. SIRS is empowered to conduct post-payment reviews of claims submitted for Medical Assistance payment. See 42 C.F.R. § 456.23 (2011) and Minn. Stat. § 256B.04, subd. 15(a) (2010) (requiring post payment reviews). SIRS selects

providers for review at random or based upon suspicion of fraud or improper payment. *Id.* Once a provider is selected, the investigator may examine the health service and financial records of the provider with 24-hours notice. Minn. R. 9505.2200, subp. 3(A) and 9505.2185, subp. 2 (2011).

3. On February 16, 2007, SIRS investigators conducted an onsite, post-payment review at Healthworks' offices. The investigators spoke with Healthworks' administrator, Maureen Newville (Newville), and requested records for 14 clients for the period from July 1, 2006 through January 31, 2007. Newville provided the investigators with partial records and informed the investigators that the rest of the records were offsite.<sup>1</sup>

4. On March 4, 2007, DHS investigators returned to the Healthworks' office for a follow-up visit and reviewed additional records provided by Newville. Newville also provided additional records by fax on March 5, 2007.<sup>2</sup>

5. SIRS investigator Margaret Newman (Newman) compared Healthworks' claims submitted to DHS with the records provided by Healthworks and determined that it failed to provide documentation to support claims totaling \$122,982.47.<sup>3</sup>

6. On April 22, 2008, DHS issued its Notice of Agency Action (NOAA) to recover \$122,982.47 in alleged overpayments from Healthworks. The NOAA detailed the deficiencies in the documentation and provided a list of each claim for which recovery was sought. The claims list provided the name of the recipient of service provided through Healthworks, the recipient's identity, service dates, the entity that submitted the claim, the entity Personal Identification Number, personal identification information, the procedure code, the units paid, the dollars paid, the dollars per unit, the discrepancy between what was submitted and the documentation provided, and the adjustment. Newman also developed a code system to identify the type of deficiency in the documentation and the claims list included the code.<sup>4</sup>

7. Healthworks served a timely notice appealing the NOAA by letter dated May 21, 2008.<sup>5</sup>

8. The notice of appeal was accompanied by additional documentation from Healthworks in the form of statements of need signed by various physicians and additional timesheets.<sup>6</sup> Newman reviewed the additional documentation, but determined that it lacked veracity because Healthworks had been given three previous opportunities to submit the documentation and had not submitted it prior to the

---

<sup>1</sup> Testimony of Margaret Newman. *See also*, Tab 4 NOAA

<sup>2</sup> Test. of M. Newman; Ex. 1, Tab 2 at DHS 1

<sup>3</sup> Test. of M. Newman; Ex. 1, Tab 2 at DHS 1.

<sup>4</sup> Test. of M. Newman; Ex. 1, Tab 4.

<sup>5</sup> DHS Tab 5, letter dated May 21, 2008.

<sup>6</sup> Ex. 1, Tabs 7-14; Ex. 2, Tabs 15-20.

issuance of the April 22, 2008 NOAA. DHS would not accept this additional documentation.<sup>7</sup>

9. On some timesheets the client signatures were missing, illegible, or questionable because they resembled the staff signature or did not resemble other signatures from the same recipient.<sup>8</sup> Newman prepared a spreadsheet that coded the types of documentation deficiencies that led to DHS's position in this matter.<sup>9</sup>

10. Mr. Jellum testified that some recipients would have been unable to sign their names due to their disability and the evidence showed that on many of the timesheets, PCAs were signing the timesheets for the recipients. Mr. Jellum acknowledged that he signed timesheets for recipient Brian Strei because Mr. Strei refused to sign the timesheets.<sup>10</sup>

11. On October 30, 2010, SIRS revised the April 22, 2008 NOAA to include overpayments identified from overlaps with time documented on Healthworks' timesheets for Beverly Price and Rhonda Egan when both were working for other employers. These claims totaled \$7,934.04.<sup>11</sup>

12. From July 1, 2006 through January 31, 2007, Ms. Egan was employed by Healthworks as a PCA. Ms. Egan was also employed by Independent School District #011. According to timesheets, Ms. Egan claimed to have been providing PCA services while she was working at ISD #011.<sup>12</sup>

13. From July 1, 2006 through January 31, 2007, Ms. Price was employed by Healthworks as a PCA. Ms. Price was also employed by Wells Fargo. According to timesheets, Ms. Price claimed to have been providing PCA services while she was working at Wells Fargo.<sup>13</sup>

14. Both Ms. Egan and Ms. Price executed settlement agreements with DHS whereby they repaid \$5,588.94 and \$4,465.32 respectively, to the Medicaid Fraud unit of DHS for overlapping timesheets during which Ms. Egan and Ms. Price submitted time allegedly working for Healthworks when they were also working for other employers.<sup>14</sup>

15. The Physician Statement of Need form for Nicole Roberts provided by Healthworks on May 21, 2008 was dated May 1, 2008, which is after the time frame for the claims for which DHS seeks recovery.<sup>15</sup>

---

<sup>7</sup> Test. of M. Newman; Ex. 1, Tab 2 at DHS 2.

<sup>8</sup> Test. of M. Newman; Ex. 1, Tabs 8-13, 18 and 19.

<sup>9</sup> Test. of M. Newman. DHS Ex. 1, Tab 4.

<sup>10</sup> Test. of Chad Jellum.

<sup>11</sup> Ex. 1, Tab 2 at DHS 4; Ex. 2, Tab 45.

<sup>12</sup> Test. of M. Newman; Ex. 1, Tab 2 and Ex. 2, Tabs 27 and 28.

<sup>13</sup> Ex. 1, Tab 2; Ex. 2, Tabs 36-39.

<sup>14</sup> DHS Tabs 27 and 38, settlement agreements dated February 25, 2009 and March 4, 2009 respectively.

<sup>15</sup> Test. of M. Newman; Ex. 1, Tab 2 at DHS 2 and Ex. 2, Tab 16.

16. The Physician Statement of Need form for Kirk Wetzlich provided by Healthworks on May 21, 2008 was dated April 20, 2008, which is after the time frame for the claims for which DHS seeks recovery.<sup>16</sup>

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Human Services (Commissioner) have authority to consider the issues raised in this case pursuant to Minn. Stat. § 256B.064, subd. 2(a) and Minn. Stat. ch. 14 (2012).

2. Pursuant to Minn. R. 1400.7300, subp. 5 (2011), the Department has the burden of proving by a preponderance of the evidence that the Department's action was proper.

3. SIRS is charged with investigating providers to monitor compliance with federal and state rules, regulations, and statutes governing the health care services provided to patients pursuant to the MHCP.<sup>17</sup>

4. Minn. Stat. § 256B.064 states in relevant part:

The Commissioner may impose sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentment of false or duplicate claims or claims for services not medically necessary [...] The commissioner may obtain monetary recovery from a vendor who has been improperly paid either as a result of conduct described in subdivision 1a or as result of vendor or department error, regardless of whether the error was intentional. Patterns need not be proven as a precondition to monetary recovery of erroneous or false claims, [...] or claims based on false statements.<sup>18</sup>

5. The Commissioner is required to recover MHCP funds acquired through abuse or fraud or improper documentations.<sup>19</sup>

6. Minn. R. 9505.2165 defines abuse to include failing to develop and maintain health service records as required under part 9505.2175, submitting repeated claims for health services that are not reimbursable under the program, submitting repeated claims from which required information is missing or incorrect, and submitting repeated claims for health services that do not comply with Minn. R. 9505.0210.<sup>20</sup>

---

<sup>16</sup> Ex. 1, Tab 2 at DHS 2; Ex. 2, Tab 20.

<sup>17</sup> Minn. R. 9505.2160, subp. 1 and 9505.2200, subp. 1 (2011).

<sup>18</sup> Minn. Stat. § 256B.064, subds. 1a and 1c (a) (2012).

<sup>19</sup> Minn. R. 9505.2215, subp. 1(A) (2011).

<sup>20</sup> Minn. R. 9505.2165, subp. 2(A)(1), (3), (5), and (7) (2011).

7. Health service providers are required to grant DHS access to their records during regular business hours.<sup>21</sup>

8. In order to receive payment by MHCP, a health service provider must document each occurrence of a health service provided to a recipient.<sup>22</sup>

9. MHCP funds paid for services not documented in the recipient's health service record shall be recovered by DHS.<sup>23</sup>

10. Personal care providers must keep records as required in Minn. R. 9505.2160-2195.<sup>24</sup>

11. Health services records maintained by a personal care provider must contain the physician's initial order for PCA services.<sup>25</sup> The physician's order must be on the form required by the Commissioner and included in the health service record prior to, or within thirty days after, the start of PCA services.<sup>26</sup> PCA services provided without a physician's statement of need are not eligible for payment.<sup>27</sup>

12. DHS has established by a preponderance of evidence that Healthworks failed to provide required documentation to support the claims listed in the April 22 Notice, in violation of Minn. R. 9505.2175, subp. 1 and 9505.0335, subp. 6(F) (2011) and Minn. Stat. § 256.0655, subd. 2(f)(1)(iv) (2008).

13. DHS has established by a preponderance of evidence that it is entitled to recovery of the \$7,934.04 in payment of MHCP funds to Healthworks sought in the October 30 Notice because the claimed services were not actually provided, in violation of Minn. R. 9505.0210, subp. B (2011).

14. DHS has established by a preponderance of evidence that Healthworks committed abuse, as defined by Minn. R. 9505.2165, when it submitted claims to which it was not entitled to payment, submitted claims that contained false information, and submitted claims for services that do not comply with Minn. R. 9505.0210.

15. DHS showed by a preponderance of the evidence that it is entitled to reimbursement for the amounts paid for the services allegedly rendered by Ms. Egan.

16. DHS further showed by a preponderance of the evidence that it is entitled to reimbursement for the amounts paid for the services allegedly rendered by Ms. Price.

17. The preponderance of the evidence showed that the Statements of Need for at least two Healthworks' clients, namely Nicole Roberts and Kirk Wetzlich, were

---

<sup>21</sup> Minn. R. 9505.2185, subp. 2 (2011).

<sup>22</sup> Minn. R. 9505.2175, subp. 1 (2011) and Minn. Stat. § 256.0655, subd. 2(f)(1)(iv) (2008).

<sup>23</sup> Minn. R. 9505.2175, subp. 1 (2011).

<sup>24</sup> Minn. R. 9505.0335, subp. 6(F) (2011).

<sup>25</sup> Minn. R. 9505.2175, subp. 7(A) (2011).

<sup>26</sup> Minn. R. 9505.2175, subp. 7(A) (2011).

<sup>27</sup> Minn. Stat. § 256B.0655, subd. 2(d) (1) (2008).

submitted after the April 22, 2008, NOAA and were for the periods after the time frame under consideration.

18. DHS has established by a preponderance of evidence that it is entitled to recovery of \$135,214.27 in overpayments of MHCP funds from Healthworks pursuant to Minn. Stat. § 256B.064, subds. 1a and 1c (a) (2012) and Minn. R. 9505.2215 (2011).

### **RECOMMENDATION**

It is respectfully recommended that the Commissioner of Human Services issue an order affirming the April 22, 2008 NOAA and the October 30, 2008 Revised NOAA.

Dated: May 30, 2013

s/Jeffrey W. Jacobs  
\_\_\_\_\_  
JEFFREY W. JACOBS  
Administrative Law Judge

Reported: Digitally Recorded

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64941, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

DHS administers the Medicaid program in the State of Minnesota pursuant to 42 U.S.C. §§ 1396-1396v (2011) and Minn. Stat. ch. 256B (2010). The Commissioner is charged among other things with assuring that payments made to providers such as Healthworks are appropriate and that all required documentation is in place. DHS is also charged with the responsibility of conducting audits of such providers to assure that payments are made correctly and that all required documentation, such as timesheets, physicians' statements of need and documentation of the services provided are in place and timely filed.

In order to receive payment by MHCP, a health service provider must document each occurrence of a health service provided to a recipient. See Minn. R. 9505.2175, subp. 1 (2011) and Minn. Stat. § 256.0655, subd. 2(f) (i) (iv) (2008). MHCP funds paid for services not documented in the recipient's health service record shall be recovered by DHS. Minn. R. 9505.2175, subp. 1 (2011).

As noted above, DHS conducted an audit of Healthworks and visited the facility on February 16, 2007, to determine if all appropriate documentation was in place. The investigators requested records for fourteen clients for the period of July 1, 2006 through January 31, 2007. Healthworks claimed that such documentation was offsite and asked that the investigators return later. They returned on March 4, 2007 and reviewed additional records. Additional records were sent to investigators on March 5, 2007. The evidence showed that the records provided by Healthworks at that time were inadequate to support payment under DHS rules.

Ms. Newman testified credibly that she carefully reviewed the records provided compared to the claims submitted and determined that the documentation was lacking.

The Agency issued a NOAA dated April 22, 2008, that included a detailed spreadsheet outlining the clients for which documentation was lacking and outlining how that documentation was inadequate. Some weeks later, on May 21, 2008, Healthworks delivered additional documentation that it claimed supported the original claims for payment. Ms. Newman again testified credibly that she reviewed this documentation, but determined that they lacked veracity given the lateness of their submission and for other reasons such as illegible signatures, signatures that were clearly done by someone other than the client, lack of timely statements of need by physicians and other reasons.

Mr. Jellum asserted that appropriate documentation must have been provided in the form of appropriate timesheets or a check could not have been originally issued.<sup>28</sup> Healthworks further asserted that appropriate documentation was available prior to April 22, 2008, and took issue with the claim by DHS that they did not have that documentation. The evidence did not support this claim. Here the evidence showed that investigators were told that the documentation was offsite and even though

---

<sup>28</sup> See, May 1, 2013 letter submitted by Healthworks.

Healthworks was given several weeks prior to April 22, 2008 to provide it, it was not until May 21, 2008 that this was provided – and then only after a detailed list of the deficiencies were provided as part of the NOAA.

Healthworks also asserted that the services were provided as evidenced on the timesheets submitted by the various PCA's. Much of this documentation was provided after the original NOAA. Others showed signatures that were suspect. Still others showed that the client clearly had not signed it or that Mr. Jellum himself had signed it instead of the client. Others showed that the client was unable to sign so the PCA would sign for the client. This claim ignores the process and the underlying purpose of an audit. While the original claims may well have been paid using the original documentation provided, an audit must determine if that documentation is appropriate and complies with the corresponding rules pertaining to that documentation.

Minn. Stat. § 256B.064 provides in relevant part as follows:

The commissioner may impose sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentment of false or duplicate claims or claims for services not medically necessary ... The commissioner may obtain monetary recovery from a vendor who has been improperly paid either as a result of conduct described in subdivision 1 a or as result of vendor or *department error, regardless of whether the error was intentional. Patterns need not be proven as a precondition to monetary recovery of erroneous or false claims, ... or claims based on false statements.*

(Emphasis Added). See also, Minn. R. 9505.2165, defining “abuse.”

The other assertion by Healthworks is that in some cases the clients would have been unable to sign themselves so the PCA would do it in their place on the timesheet in order to get paid. In some cases, the PCA is a family member, which also could explain the large number of hours they claimed for providing PCA services, since they literally lived with the client. Ms. Newman testified that under agency rules this is not allowed and constitutes a deficiency in documentation warranting repayment.

Further, on this record there was inadequate evidence as to which clients this assertion by Healthworks applied. This, coupled with the lateness of the documentation provided, in many cases undercut the credibility of Healthworks' claims here.

As noted in the Findings and Conclusions, the record supported the DHS claims for recovery of overpayments in this matter for the reasons stated above.

**J. W. J.**